

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

STEVEN M. JACOB and)	
DAN MEIS,)	
)	
Plaintiffs,)	4:04CV3240
)	
vs.)	MEMORANDUM AND ORDER
)	(appeal)
HAROLD CLARKE, et al.,)	
)	
Defendants.)	

The plaintiffs, Steven M. Jacob and Dan Meis, prisoners, have filed a Notice of Appeal (filing no. 42) and Applications for Leave to Proceed In Forma Pauperis ("IFP") on appeal. See filing no. 43, Mr. Jacob's IFP Application, supported by a certified copy of his inmate trust account (filing no. 44), and filing no. 45, Mr. Meis' IFP Application, supported by a certified copy of his inmate trust account (filing no. 46).

Because the plaintiffs have previously received leave to proceed IFP in the district court, and because the appeals are taken in good faith, the plaintiffs may continue to proceed IFP on appeal pursuant to Fed. R. App. P. 24(a)(3).¹ 28 U.S.C. § 1915(b)(1) states how an initial appellate partial filing fee is calculated: "[I]f a prisoner ... files an appeal in forma pauperis, the prisoner shall be required to pay the full amount of a filing fee. The court shall assess and, when funds exist, collect, as a partial payment of any court fees required by law, an initial partial filing fee of 20 percent of the greater of—

- (A) the average monthly deposits to the prisoner's account; or
- (B) the average monthly balance in the prisoner's account for the 6-month period immediately preceding the filing of the complaint or notice of appeal."

¹Fed. R. App. P. 24(a)(3) states:

(a) Leave to Proceed in Forma Pauperis....
 (3) Prior Approval. A party who was permitted to proceed in forma pauperis in the district-court action, or who was determined to be financially unable to obtain an adequate defense in a criminal case, may proceed on appeal in forma pauperis without further authorization, unless the district court-- before or after the notice of appeal is filed--certifies that the appeal is not taken in good faith or finds that the party is not otherwise entitled to proceed in forma pauperis. In that event, the district court must state in writing its reasons for the certification or finding.

In this case, Mr. Jacob is responsible for an initial partial appellate filing fee of \$25.51 for the filing of this appeal. Mr. Meis is responsible for an initial partial appellate filing fee of \$28.06 for his appeal.

The plaintiffs are hereby notified that leave to proceed IFP on appeal does not exempt them from liability for payment of the full \$255 appellate filing fees in installments regardless of the outcome of their appeals. In addition, by filing a notice of appeal, each plaintiff consents to the deduction by prison officials of the filing fee from that plaintiff's inmate trust account.

After payment of the initial partial appellate filing fee, the remaining balance of the appellate filing fees will be collected by each plaintiff's institution in accordance with 28 U.S.C. § 1915(b)(2), which states:

(b)(2) After payment of the initial partial filing fee, the prisoner shall be required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. The agency having custody of the prisoner shall forward payments from the prisoner's account to the clerk of the court each time the amount in the account exceeds \$10 until the filing fees are paid.

THEREFORE, IT IS ORDERED:

1. That filing no. 43, the Application for Leave to Proceed In Forma Pauperis ("IFP") on appeal filed by Steven M. Jacob, is granted; and an appellate filing fee of \$255 is assessed for this appeal, to be paid in accordance with 28 U.S.C. § 1915(b), with an initial partial filing fee of \$25.51 to be remitted to the court when funds are available in the plaintiff's inmate trust account;

2. That filing no. 45, the Application for Leave to Proceed In Forma Pauperis ("IFP") on appeal filed by Dan Meis, is granted; and an appellate filing fee of \$255 is assessed for this appeal, to be paid in accordance with 28 U.S.C. § 1915(b), with an initial partial filing fee of \$28.06 to be remitted to the court when funds are available in the plaintiff's inmate trust account;

3. That, thereafter, all future custodians of the plaintiffs shall collect and remit the balance of the \$255 appellate filing fees in the manner required by 28 U.S.C. § 1915(b)(2);

4. That the Clerk of the Court shall send a copy of this order to the appropriate officer for the plaintiffs' institution and to the Eighth Circuit Court of Appeals; and

5. That the Clerk of Court shall process the appeals to the Eighth Circuit Court of Appeals.

DATED this 9th day of March, 2006.

BY THE COURT:

s/ Joseph F. Bataillon
JOSEPH F. BATAILLON
Chief District Judge